))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6306 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAHIM NATHUBHAI KHOKHAR

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR SJ DAVE, AGP for Respondent-State.

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 09/08/2000

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as " the Act of 1985") by the order dated 8-5-2000, passed by the Police Commissioner, Rajkot, and he has been declared as

dangerous person.

2. It is a settled principles of law that in order to bring a person within the expression " dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-social Activities Act, 1985, (for short " the Act of 1985 "), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2 (c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression " public order". A distinction has to be drawn between the " law and order " and " maintenance of public order ". A reference may be made of M.J.Shaikh v. M.M.Mehta, Comissioner of Police & Ors.

3. Learned advocate for the petitioner submitted that there is non-application of mind on part of the detaining authority because while passing the impugned order of detention, the detaining authority has considered Section 56 and 57 of the Bombay Police Act while applying its mind with regard to the aspect of lesser drastic remedy. In support of the contention, learned advocate for the petitioner has relied upon a decision reported in 1992 (2) G.L.H. 350 Bhupatbhai Ramjibhai Vasava v. District Magistrate, Bharuch and others wherein it is held as under :

> "The learned Advocate for the petitioner submitted that while passing the impugned order of detention, the detaining authority has considered Ss.56 and 57 of the Bombay Police Act while applying its mind with regard to the aspect of lesser drastic remedy. It is stated that the actions under Ss. 56 and 57 of the Bombay Police Act were considered by the detaining authority and it is stated in the grounds of detention that such time will be consumed in taking proceedings under Ss.56 and 57 of the Bombay Police Act and that the detenu is likely to continue his activities in the area in which he will reside because of the externment order and taking into consideration these provisions, the detaining authority has passed the detention order under the provisions of the said Act.
>
> Now S.57 of the Bombay Police Act cannot

> apply as per the activities alleged in the grounds of detention because the petitioner is not convicted in a single offence at any time as envisaged by S.57 of the Bombay Police Act. Section 57 of the Bombay Police Act will apply in a case where the person is convicted of the offences mentioned in S.57 of the Bombay Police Act and, therefore, the subjective satisfaction arrived at by the detaining authority is vitiated because of non-application of mind."

4. So the points raised by the petitioner are fully covered by the decision reported in 1992 (2) G.L.H. 350 (Supra. Since the petitioner succeeds only on this point, learned advocate for the petitioner does not press any other points.

5. In view of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 8-5-2000 passed against the detenu is hereby quashed. The petitioner-detenu Rahim Nathubhai Khokhar is hereby ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.Dholakia, J.)

*mithabhai